

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP
1900 ST. JAMES PLACE SUITE 500
HOUSTON, TX 77056
(713) 621-8673

BDFTE# 00000001376029

Attorney for BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING,
LP ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

IN RE:	§	CASE NO. 09-10168-RLJ-13
	§	
CARL LEON COLEMAN,	§	
Debtor	§	CHAPTER 13
	§	
BAC HOME LOANS SERVICING, LP	§	
FKA COUNTRYWIDE HOME	§	
LOANS SERVICING, LP ITS	§	
ASSIGNS AND/OR SUCCESSORS IN	§	
INTEREST,	§	
Movant	§	HEARING DATE: 11/04/2009
	§	
v.	§	TIME: 11:00 AM
	§	
CARL LEON COLEMAN; WALTER	§	
O'CHESKEY, Trustee	§	
Respondents	§	JUDGE ROBERT L. JONES

**MOTION OF BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME
LOANS SERVICING, LP ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST
FOR RELIEF FROM STAY OF ACTION AGAINST DEBTOR(S) PURSUANT TO 11
U.S.C. § 362(a) AND WAIVER OF THIRTY DAY REQUIREMENT PURSUANT TO
§ 362(e)**

NOTICE

**NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN
RESPONSE IS ELECTRONICALLY FILED OR SUBMITTED ON DISKETTE TO
THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1205 TEXAS
AVENUE, IN ROOM 306, LUBBOCK, TX 79401 BEFORE THE CLOSE OF
BUSINESS TWELVE DAYS FROM THE SERVICE OF THIS MOTION. IF
SERVICE IS BY MAIL, THREE ADDITIONAL DAYS ARE ALLOWED PURSUANT**

TO FED. R. BANKR. P. 9006 (f).

ANY RESPONSE MUST BE IN WRITING, ELECTRONICALLY FILED OR SUBMITTED ON DISKETTE TO THE CLERK AND A COPY SERVED UPON COUNSEL FOR THE MOVING PARTY WITHIN THE TIME DESCRIBED ABOVE. IF NO RESPONSE IS TIMELY FILED, THE RELIEF REQUESTED SHALL BE DEEMED UNOPPOSED AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT.

IF A RESPONSE IS FILED, A FINAL HEARING ON THE MOTION WILL BE HELD AT 11:00 AM ON NOVEMBER 04, 2009, IN 3RD AND PINE, ROOM 2201, ABILENE, TX 79601-3928. THE RESPONSE MUST CONTAIN THE INFORMATION REQUIRED BY N.D. TEX. L.B.R. 4001.1 (b).

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Movant, BAC HOME LOANS SERVICING, LP FKA
COUNTRYWIDE HOME LOANS SERVICING, LP ITS ASSIGNS AND/OR
SUCCESSORS IN INTEREST, by and through the undersigned attorney, and moves the
Court as follows:

1. This Motion is brought pursuant to 11 U.S.C. §362(d) in accordance with Rule 4001 of the Bankruptcy Rules.

2. On or about May 08, 2009, Debtor (hereinafter "Debtor") filed a petition for an order of relief under Chapter 13 of the Bankruptcy Code, 11 U.S.C.

3. At the time of filing the Chapter 13 petition, Movant held a Texas Home Equity Note executed on December 20, 2007, by CARL LEON COLEMAN in the original amount of SIXTY-EIGHT THOUSAND EIGHT HUNDRED DOLLARS AND ZERO CENTS (\$68,800.00) with interest thereon at the rate of 8.250% per annum. A true and correct copy of the Texas Home Equity Note is attached hereto as Exhibit "A". Movant is the Servicer, the

holder of the Note and the mortgagee of record, holding a first security interest in the below described real property and is authorized to bring this action as Movant on behalf of the Investor* pursuant to the Freddie Mac Single-Family Seller/Servicer Guide, the servicing agreement between Servicer and Freddie Mac, which is published on AllRegs at <http://www.freddiemac.com/sell/guide/#>.

4. The indebtedness is secured by a Texas Home Equity Security Instrument dated December 20, 2007 and executed by CARL LEON COLEMAN on real estate with all improvements known as:

BEING ALL OF LOT 4 AND PART OF LOT 3, BLOCK 31, T.C. CAMPBELL'S REPLAT OF COLLEGE DRIVE ADDITION TO THE CITY OF ABILENE, TAYLOR COUNTY, TEXAS, AS SHOWN BY PLAT RECORDED IN VOLUME 1, PAGE 620, PLAT RECORDS, TAYLOR COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 4;

THENCE N0° 10'W 208.5' TO AN IRON PIN ON THE EBL OF COTTONWOOD STREET;

THENCE N87° 14'E 311.6' ALONG A FENCE LINE OT AN IRON PIN;

THENCE S21° 07'E 237' TO AN IRON PIN AT THE SOUTHEAST CORNER OF SAID LOT 4;

THENCE S89° 38' W AT 393.3' PASS AN IRON PIN AND CONTINUING ON FOR A TOTAL DISTANCE OF 396.2' TO THE PLAT OF BEGINNING.

A true and correct copy of the Texas Home Equity Security Instrument is attached hereto as Exhibit "B".

5. Debtor has failed to maintain current the post-petition payments due under the Texas Home Equity Note and is presently in arrears for 2 payments through and including the September 1, 2009 payment.

6. The outstanding indebtedness to Movant is \$67,962.45 principal plus accrued

interest, late charges, attorneys fees and costs as provided in the Texas Home Equity Note and Texas Home Equity Security Instrument.

7. Further cause may exist to terminate the automatic stay if the Debtor fails to provide proof of adequate insurance and payment of applicable taxes by Debtor as required by the Texas Home Equity Note and Texas Home Equity Security Instrument. Movant hereby demands proof of insurance and payment of applicable taxes by Debtor. Movant reserves the right to further assert that Debtor has failed to pay taxes or insurance based on the response of Debtor.

8. In accordance with the terms of the Texas Home Equity Note and Texas Home Equity Security Instrument, Movant would allege that it is entitled to reasonable post-petition attorneys fees, including, but not limited to, fees, if any, for the preparation and filing of a proof of claim and fees and costs for the filing of this Motion for Relief from Stay.

9. Debtor has failed to provide adequate protection to Movant which constitutes cause to terminate the automatic stay of 11 U.S.C. §362(a).

10. By reason of the foregoing, Movant requests the Court to terminate the stay so Movant may proceed to foreclose in accordance with its Texas Home Equity Note and Texas Home Equity Security Instrument.

11. The Movant further seeks relief in order to, at its option, offer, provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement. The Movant may contact the Debtor via telephone or written correspondence to offer such an agreement. Any such agreement shall be non-recourse unless included in a reaffirmation agreement.

12. Movant reserves the right to assert an 11 U.S.C. § 362(d)(2) Cause of Action, if

appropriate, at the hearing on Movant's Motion for Relief.

13. The provision of Rule 4001 (a) (3) should be waived and Movant be permitted to immediately enforce and implement any order granting relief from the automatic stay.

WHEREFORE, Movant prays that this Court enter an order, after notice and hearing, terminating the automatic stay as to Movant; alternatively, Movant be made whole by having all post-petition payments brought current. Movant further prays that the Court waive the provision of Rule 4001 (a) (3) and that BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST be permitted to immediately enforce and implement any order granting relief from the automatic stay; that Movant be awarded its reasonable post-petition attorneys fees and expenses for this Motion; and, that Movant be granted such other and further relief as is just.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP

BY: /s/ MITCHELL BUCHMAN
MITCHELL BUCHMAN
TX NO. 03290750
1900 ST. JAMES PLACE SUITE 500
HOUSTON, TX 77056
Telephone: (713) 621-8673
Facsimile: (713) 621-8583
E-mail: NDECF@BBWCDF.COM
ATTORNEY FOR MOVANT

9/23/2009

CERTIFICATE OF CONFERENCE

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, represents the creditor on the foregoing Motion. The undersigned, an attorney, employed by BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, states that prior to filing the foregoing motion he/she did the following:

Made a good faith effort to negotiate a settlement of the dispute with Debtor's Counsel.

NOTES: Damian Abreo called Monte White's office and spoke with Cassidy. Debtor opposes the requested relief.

Date of Conference Call: September 21, 2009 3:32 p.m.

BY: /s/ MITCHELL BUCHMAN 9/23/2009
MITCHELL BUCHMAN
TX NO. 03290750
1900 ST. JAMES PLACE SUITE 500
HOUSTON, TX 77056
Telephone: (713) 621-8673
Facsimile: (713) 621-8583
E-mail: NDECF@BBWCDF.COM
ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2009, a true and correct copy of the foregoing Motion for Relief from Stay was served via electronic means as listed on the Court's ECF noticing system or by regular first class mail to the parties on the attached list.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP

/s/ MITCHELL BUCHMAN 9/23/2009

MITCHELL BUCHMAN
TX NO. 03290750
1900 ST. JAMES PLACE SUITE 500
HOUSTON, TX 77056
Telephone: (713) 621-8673
Facsimile: (713) 621-8583
E-mail: NDECF@BBWCDF.COM
ATTORNEY FOR MOVANT

DEBTOR:

CARL LEON COLEMAN
1701 COTTONWOOD
ABILENE, TX 79601

TRUSTEE:

WALTER O'CHESKEY
6308 IOLA AVENUE
LUBBOCK, TX 79424

US TRUSTEE:

1100 COMMERCE STREET, ROOM 976
EARLE CABELL FEDERAL BLDG
DALLAS, TX 75242

DEBTOR'S ATTORNEY:

PAMELA JEAN CHANEY
402 CYPRESS, STE. 310
ABILENE, TX 79601

PARTIES IN INTEREST:

TAYLOR CAD
C/O MICHAEL REED
P.O. BOX 1269
ROUND ROCK, TX 78680

PARTIES REQUESTING NOTICE:

MCCREARY, VESELKA, BRAGG & ALLEN, P.C.
P.O BOX 1269
ROUND ROCK, TX 78680